

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: KILEO, J.A MUSSA, J.A., And MMILA, J.A.)

CRIMINAL APPLICATION NO.9 OF 2011

MSHAMU SAIDAPPLICANT

VERSUS

**THE REPUBLIC.....RESPONDENT
(from Judgment of the Court of Appeal Tanzania
at Dar es Salaam)**

(Ramadhani, J.A, Msoffe, J.A.)

dated the 1st day of June, 2006

in

Criminal Appeal No. 188 Of 2002

RULING OF THE COURT

7th day of July, 2015

KILEO, J.A.:

When the matter was called on for hearing, Mr. Nassoro Katuga, learned Senior State Attorney appearing on behalf of the respondent Republic raised an issue of the competence of the application before us. He pointed out that the Notice of Motion was accompanied by an unsigned affidavit thus contravening the provisions of Rule 48 (1) of the Court of Appeal Rules, 2009. (The Rules). Mr. Katuga argued that an unsigned

affidavit is as good unsigned affidavit is as good as no affidavit and as such there being no affidavit the application remains to be incompetent and should be struck out.

Essentially the applicant did not challenge Mr. Katuga's averment. He merely lamented that he is in custody and every document is prepared for him by the authorities under whom he is kept in custody.

It is not disputed that the affidavit in support of the Notice of Motion instituting this application is not signed by the applicant. The signature of the deponent is one of the essential ingredients of any valid affidavit (**see Director of Public Prosecutions versus Dodali Kapufi & Patson Tusalele – Cr. Application No 11 of 2008** (unreported)). Much as we may sympathies with the applicants' predicament, as nightly pointed out by Mr. Katuga, ignorance of the law cannot be a ground for us to flout statutory provisions. An unsigned affidavit is indeed as good as no affidavit at all. This in effect means that the applicant's Notice of Motion was not supported by an affidavit in accordance with the dictates of Rule 48(1) of the Rules. Consequently, the application is found to be incompetent and for

hereby do.

It is accordingly so ordered.

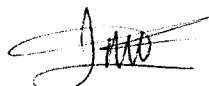
Dated at Dar es Salaam this 17th day of July, 2015.

E. A. KILEO
JUSTICE OF APPEAL

K.M.MUSSA
JUSTICE OF APPEAL

B.MK.MILLA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



P.W.BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL